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# Supreme Court of the United States

**October Term, 1964**

**No. 454**

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

*Petitioners,*

*against*

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

*Respondents.*

## MOTION FOR REVERSAL ON THE GROUNDS OF MOOTNESS

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## MOTION FOR REVERSAL ON THE GROUNDS OF MOOTNESS

Motion is hereby made, in accordance with the rules of this Court, for an order reversing or vacating the decision of the courts below on the grounds of mootness and remanding the case with a direction to dismiss the orders heretofore entered.

## Developments Since the Petition for Certiorari

As the Court knows, this case, as well as the related case of *American Airlines, Inc.* v. *Manning,* Dkt. No. 455, both arise from long-standing disputes as to the crew complement composition of airline cockpits. More particularly, they have arisen from the various contentions by pilots, flight engineers, their representatives, and the carrier, as to the qualifications necessary for the man serving in the "third seat" in the airliner cockpit. Incidental to that determination, there has also been the question of the identity of the union bargaining representative for such crew member.

The instant case arose out of a complaint by the respondent that the petitioner/defendant was improperly bargaining or attempting to bargain for the American Airline flight engineer group and otherwise improperly interfering with those employees' choice of their bargaining representative. This complaint resulted in the entry of a preliminary injunction against the American Airline pilot group (now represented by the Allied Pilots Association and hereinafter referred to as "Allied"), which prohibited them from what we consider many of the legitimate activities granted by federal law to labor organizations. This decision was affirmed by a divided court in the second circuit and a petition for review in this Court was subsequently filed and granted. Since the submission of our petition and subsequent to its grant, all of the parties have been actively involved in the collective bargaining process in order to achieve a negotiated and final resolution of their

differences. The culmination of these efforts took place on March 12, 1965 when all three parties signed a so-called Tripartite Agreement to be effective as of December 11, 1964. The full text of the Tripartite Agreement is being made available to the Court with this motion.* However, for the Court's convenience, we will refer specifically to a few aspects of that Agreement which demonstrate the mootness of the instant proceeding.

The Tripartite Agreement, in effect, guarantees the rights of present flight engineers to occupy the "third seat" in the cockpit and to enjoy continued representation by the AAL Chapter FEIA. However, the agreement also provides (¶3) that "All cockpit crew members hired by the Company on or after July 1, 1964, shall meet the Company's employment requirements for the hiring of pilots, and shall be represented by the Allied Pilots Association * * *" and covered by the pilot collective bargaining agreement. With certain limited exceptions (¶9), the Agreement also provides that flight engineers will in the future be automatically entitled to the changes in rules and working conditions negotiated in the pilots' collective bargaining agreements. In recognition of the bargaining services rendered to the flight engineers and the FEIA Chapter, Appendix D of the Agreement provides for monetary payment by the Chapter for such services.

Subject to the provisions already commented upon for the diminishing scope of the flight engineer bargaining unit.

* Since the Tripartite Agreement is relevant to the motions being made both by these petitioners and by American Airlines, it has been printed as a Supplemental Joint Appendix to both motions in order to minimize the cost of printing to the parties.

the Agreement in ¶1 and ¶2 contractually recognizes the bargaining rights of the two unions. Paragraph 8 of the Agreement establishes, pursuant to Section 204 of the Railway Labor Act, a Tripartite Board of Adjustment with reference, if necessary, to a neutral referee for the settlement of "any dispute, claim or grievance arising out of or relating to the interpretation or application" of the Agreement; such disputes would include any question arising under Paragraphs 1 and 2 or any other provision dealing with the representation rights of the two unions.

Paragraph 12(b) of the Agreement contains a broad provision declaring that the Agreement is a permanent resolution of the parties' differences, and committing the signatories to refrain from initiating any proceeding to question the Agreement and requiring them to participate in the defense of any proceeding that could conceivably be brought by a third party.

It has been the understanding of the parties throughout their negotiations on the Tripartite Agreement that a successful resolution of their differences would necessarily require the termination of all litigation arising out of those controversies. A preliminary agreement stating that "all pending court proceedings between the parties would be discontinued without costs" was initialed on October 17, 1964. Counsel for the various parties have endeavored to implement the objectives of the parties by agreement upon some form of stipulation. There is no need to involve the Court in the pros and cons of the various formulations advanced on a "no prejudice" basis; suffice it to say, the parties have not found it possible to agree on a single satisfactory form. In the absence of some such agreement,

we felt it our obligation, as petitioners, to advise the Court of these developments which have rendered moot the controversy between the parties concerning representation rights. Consequently, in accordance with the Rules and previous decisions of this Court, we have made the instant motion.

## POINT I

**Under the doctrine of *U. S.* v. *Munsingwear*, the instant procedure is the correct means of disposition.**

This Court has, in the past, commented upon the correct procedure for disposing of a case which has become moot while pending decision. In *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39 (1950), this Court said:

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." [Citations in footnote omitted.]

In the *Munsingwear* case, which arose under the antitrust laws, there was an earlier decision dismissing an action for an injunction; that decision had been left standing. As the Court explained [340 U. S. at 40]:

> "In this case the United States made no motion to vacate the judgment. It acquiesced in the dismissal. It did not avail itself of the remedy it had to preserve its rights. Denial of a motion to vacate could bring the case here. Our supervisory power over the judgments of the lower federal courts is a broad one. See

28 U. S. C. §2106, 28 U. S. C. A. §2106, 62 Stat. 963; United States v. Hamburg-Amerikanische Packet-Fahrt-Actien Gesellschaft, 239 U. S. 466, 478, 36 S. Ct. 212, 217, 60 L. Ed. 387; Walling v. James V. Reuter, Inc., 321 U. S. 671, 676-677, 64 S. Ct. 826, 828, 829, 88 L. Ed. 1001. As already indicated, it is commonly utilized in precisely this situation to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences. The case is therefore one where the United States, having slept on its rights, now asks us to do what by orderly procedure it could have done for itself. The case illustrates not the hardship of *res judicata* but the need for it in providing terminal points for litigation."

Thus, this Court held that the Government was bound in a treble damages suit arising out of the same circumstances by the *res judicata* effect of the earlier dismissal of the action for an injunction. In commenting upon the procedure we are now adopting and which the Government in the *Munsingwear* case *should have* followed, this Court commented [340 U. S. at 40]:

"When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary."

Similarly, the instant case is one involving only a preliminary injunction which by definition is a tentative and interim determination which should not be left standing to plague the future relations of the parties.

We emphatically believe that the issues we have presented to this Court on our petition for certiorari are important ones affecting the administration of justice in the Federal courts and, in particular, the application of the Norris-LaGuardia Act to labor organizations. We maintain the view that the implications of the decisions below

go far beyond the interests of the parties in the instant matter. Moreover, we are quite troubled by the fact that the issues arising from the injunction against the pilot organization were never adequately treated in any of the opinions by the lower courts. We believe those decisions were wrong, and it is with great reluctance that we contemplate the fact that they will not be resolved at an early date by this Court. However, in view of the Tripartite Agreement reached by the parties, which has been presented to this Court, we must in candor advise the Court that the dispute concerning the representation of the cockpit crew employees of American Airlines has become moot. Both from the point of view of the petitioners herein (who must avoid the pitfalls explained in the *Munsingwear* case) and in the interest of diminishing the effect of a doubtful precedent in the dynamic area of labor relations and labor law, we respectfully submit that the Court should reverse or vacate the judgment below and remand with a direction to dismiss, without costs to either party.

## Conclusion

**For the foregoing reasons, it is respectfully submitted that the petitioners' motion be granted, without costs to either party.**

April, 1965

Respectfully submitted,

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